

The complaint

Mr G is unhappy that a car supplied to him under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

What happened

In May 2023, Mr G was supplied with a used car through a hire purchase agreement with MotoNovo. He paid a £2,500 deposit and the agreement was for £19,989 over 61 months; with 59 monthly payments of £450.63 and a final payment of £451.63. At the time of supply, the car was almost seven years old, and had done around 51,000 miles.

In September 2023, Mr G approached MotoNovo as the car had a coolant leak. MotoNovo arranged for the car to be inspected by an independent engineer. The engineer found an active coolant leak which MotoNovo determined to be as a result of previous failed repairs. So, they agreed that Mr G could reject the car. MotoNovo also said they would refund Mr G's deposit and the payments he'd made, less a fair usage charge.

Unhappy with this offer, Mr G brought his complaint to the Financial Ombudsman Service for investigation. After reviewing the evidence, our investigator initially said that MotoNovo's offer was fair, and that they didn't need to do anything more.

Mr G didn't agree with the investigator's opinion - he didn't think that MotoNovo keeping one payment for every 1,000 miles the car had travelled while it was in his possession was fair. The investigator issued another opinion, explaining why they thought the amount MotoNovo was charging was fair. However, they did say that MotoNovo should pay Mr G statutory interest on the deposit refund.

Mr G still didn't agree with the investigator. He said that MotoNovo hadn't paid him the statutory interest on the deposit refund (although MotoNovo said this had been included), and that he had to spend around £1,000 on hire car charges while the car was off the road.

Mr G provided evidence of his hire car costs, which were forwarded to MotoNovo. They queried that some of the hire costs were for the hire of light commercial vehicles, which MotoNovo said was not an equivalent vehicle to the coupe they'd supplied to Mr G. However, Mr G said that he hired what was available, and selected the most cost-effective option, when an equivalent vehicle to the one supplied by MotoNovo wasn't available.

Following this MotoNovo also agreed to refund Mr G £1,063.89 of the hire car costs, plus statutory interest. Mr G agreed to this as resolution to the hire car costs part of his complaint. However, as no agreement had been reached on the fair usage payment, this matter has been passed to me to make a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr G was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MotoNovo are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MotoNovo can show otherwise. So, if I thought the car was faulty when Mr G took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MotoNovo to put this right.

In this instance, it's not disputed there was a problem with a coolant leak on the car, nor that Mr G had the right to reject the car as a result of this fault. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think MotoNovo should do to put things right.

Putting things right

If a consumer rejects a vehicle after one or more failed repairs, as was the case here, the CRA allows the supplier of the goods to make a deduction from any refund to reflect the use the consumer has had of the vehicle before rejecting it. This is known as the fair usage charge. However, the CRA doesn't specify how the fair usage charge should be calculated.

In this instance, MotoNovo have said they are applying a fair usage charge of one month's payment for every 1,000 miles the car travelled while it was in Mr G's possession. And they've calculated this to be the equivalent of seven monthly payments. As Mr G wasn't being charged a monthly payment based on usage – it didn't change taking into account the mileage covered month on month – I can see why he considers this way of calculating the fair usage charge to be unfair.

I've considered an alternative method of calculating the fair usage charge that we also use – that Mr G only has to make the payments for the period of time the car was both in his possession and in a roadworthy state. The car was supplied to Mr G in May 2023, and he complained to MotoNovo that the car wasn't roadworthy due to the coolant leak in September 2023 – a period of five months. However, when applying a calculation of this nature, the payment refund for the time the car wasn't roadworthy would be made to reflect Mr G's alternate transportation costs and would therefore not be paid in addition to these costs – either a payment refund or alternate transport costs would be covered, not both.

While the supplying dealership had attempted to repair the car unsuccessfully between May and September 2023, I haven't seen any evidence, such as an independent engineer's report, that shows me the car wasn't roadworthy (and was therefore unable to be used) prior to Mr G complaining to MotoNovo. So, if I were to apply the alternate calculation detailed above, I would only expect MotoNovo to retain five payments.

As I've said above, MotoNovo's calculation of fair usage would result in them retaining seven monthly payments. However, they have also agreed to refund Mr G's alternate transport costs (the hire car costs), and the amount of this refund is the equivalent of between two- and three-monthly payments. As such, as MotoNovo have agreed to refund the hire car costs, this brings their fair usage calculation broadly in line with the alternative calculation I've already detailed.

As such, in these circumstances, I'm satisfied that MotoNovo have fairly calculated the fair usage charge, and I won't be asking them to refund any further payments.

Therefore, if they haven't already done so, MotoNovo should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr G;
- remove any adverse entries relating to this agreement from Mr G's credit file;
- refund the deposit Mr G paid (if any part of this deposit is made up of funds paid through a dealer contribution, MotoNovo is entitled to retain that proportion of the deposit);
- refund the monthly payments Mr G has made during the lifetime of the agreement, less the equivalent of seven monthly payments for his fair usage of the vehicle while it was in his possession;
- refund Mr G £1,063.89 of the hire car costs he incurred, as agreed by both parties; and
- apply 8% simple yearly interest on the refunds, calculated from the date Mr G made the payment to the date of the refund.

†If HM Revenue & Customs requires MotoNovo to take off tax from this interest, MotoNovo must give Mr G a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr G's complaint about MotoNovo Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 October 2024.

Andrew Burford
Ombudsman